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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,576

11/17/2006

Thomas Buchberger

R.304929

1291

2119 7590 04/08/2009
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EXAMINER

CHAUDRY, ATIF H

ART UNIT

PAPER NUMBER

3753

MAIL DATE

DELIVERY MODE

04/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/549,576	Applicant(s) BUCHBERGER ET AL.	
	Examiner ATIF H. CHAUDRY	Art Unit 3753	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 22,23,25-27,29-42.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Atif Chaudry/
 Examiner, Art Unit 3753

/John Rivell/
 Primary Examiner, Art Unit 3753

Continuation of 3. NOTE: The newly added claim 43 recites bore oriented at an oblique angle which was not claimed previously. In addition claim 31 recites newly added limitation "over the circumference of the valve piston".

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument about the finality of the office action being premature is not persuasive since the Examiner cited Cadman as a new prior art (since it better depicted the applicant's inventive idea) and kept the initial rejection based upon Jay et al in view of Waffler as an alternative. Therefore the finality of prior art is proper.

Applicant's argument regarding rejection of claim 22 over Jay et al in view of Waffler that Jay fails to disclose a steplike transition of valve holder 14, 15 is not persuasive since Waffler has been cited to show incorporation of a steplike transition.

Applicant's argument that "in Waffler element 46 is not a valve holder and element 12 is not a valve insert since it is a valve housing" is not persuasive since both elements are part of the housing such that element 12 is shown in figure 1 as inserted into the stepped portion 50 of the element 46.

Applicant's argument that Waffler teaches an adjustment mechanism which seats against the valve holder and therefore the spring does not rest against the seat is not persuasive since Waffler's device would function properly without the adjustment mechanism and since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involve only routine skill in the art. In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

Applicant's argument that addition of a lateral outflow conduit as taught by Weirich would destroy the references of Jay et al or Cadman is not persuasive since Weirich is being cited to show incorporation of an alternative location of the outflow conduit and not an additional outflow conduit.

Applicant's argument that Jay et al does not disclose flat surfaces having slots on the outer circumference is not considered since the amended claims have not been entered..